

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
)	
v.)	Criminal No. 05-10102-JLT
)	
)	
JOHN BRUENS, MARY STEWART, MARC)	
SIROCKMAN, MELISSA VAUGHN)	
)	
Defendants.)	

GOVERNMENT'S RESPONSE TO DEFENDANTS' JOINT MOTION
IN *LIMINE* TO EXCLUDE A PORTION OF MARY STEWART'S
MARCH 6, 2002 STATEMENT TO THE FBI

Now comes the United States of America, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, and opposes the Defendants' Joint Motion *In Limine* to Exclude a Portion of Mary Stewart's March 6, 2002 Statement to the FBI, and submits this memorandum in support thereof.

I. Introduction:

This motion *in limine* filed by the defendants jointly seeks to exclude what they describe as, "the editorial comments that were inserted, under the guise of a redaction, into a statement made by Stewart to the FBI on March 6, 2002." The defendants once again¹ challenge the version of the Stewart statement that

¹ In addition to the motions previously ruled upon by the Court, Melissa Vaughn ("Vaughn") filed a related Motion *in Limine* to redact the voice mail. The Government herein incorporates by reference its Response to that motion.

this Court has already ruled admissible as redacted. This time they argue that the parenthetical clause that was inserted into the redacted version - to give context and to identify the "incident" to which Mary Stewart referred during her interview with the FBI - is inadmissible hearsay. The Defendants assert that the parenthetical clause is hearsay because it is Kim Jackson's out of court statement and does not represent an admission by Stewart. The defendants' characterization of the parenthetical is not correct. The Stewart statement as redacted is not hearsay and the Court should admit the statement as currently redacted with the parenthetical intact,² for the reasons set forth below.

II. Stewart's Statements Were Made After Reviewing and Responding to Paragraph 1 of the Voicemail Transcription:

When Mary Stewart was interviewed by the FBI on March 6, 2002, the agents showed her the entire transcription of the Voice Mail and then specifically asked her to "review and explain" the first paragraph of the transcription. The report states:

STEWART was requested to review and explain the following portion of an E-mail³ message:

Voicemail sent by Melissa Vaughn Wednesday, March 3, 1999 regarding John Bruens offer to

² It should be noted that it is the Government's present intention to offer this evidence through the oral testimony of an FBI Agent and not in written form.

³ All parties agrees that the report incorrectly refers to this communication as an e-mail rather than a voice mail.

pay for certain high writing MDs flight and hotel in Cannes, France in April to attend an HIV Nutrition/Wasting program in exchange for 30 patients RXs during our 6 day sales blitz.

(Emphasis added).

One of the FBI agents who was present during the interview will testify that the statements made by Mary Stewart that followed, and that are memorialized in the report and agent notes, were made after she complied with their request to "review and explain" the first paragraph of the voice mail. That first paragraph sets forth the facts underlying the scheme that forms the basis of the charges in this Indictment. There is no way to understand Mary Stewart's statements other than by putting them in the proper context, that is, in response to being shown the transcription of the voice mail.⁴ Her statements are in direct response to being shown that paragraph. It is not hearsay in this context.

For this reason, the defendants' Joint Motion *in Limine* to Exclude a Portion of Mary Stewart's March 6, 2002 Statement to

⁴ Contrary to the allegation in the motion, the Government has not changed its position as to the admissibility of the first paragraph as written by Kim Jackson. She will, however, testify to those facts.

the FBI should be denied and the Court's prior ruling should be re-affirmed.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Mary Elizabeth Carmody
MARY ELIZABETH CARMODY
SUSAN M. POSWISTILO
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I hereby certify that these documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: 04/04/07

/s/ Mary Elizabeth Carmody
SUSAN M. POSWISTILO
Assistant U.S. Attorney